

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

v.

CRSYTAL MITCHELL

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**C.A. No. T21-0010
21203500177**

DECISION

PER CURIAM: Before this Panel on August 25, 2021— Magistrate DiChiro (Chair), Associate Judge Parker, and Chief Magistrate DiSandro, sitting—is Crystal Mitchell’s (Appellant) appeal from a decision of Associate Judge Lillian M. Almeida (Trial Judge) of the Rhode Island Traffic Tribunal, sustaining the charged violations of G.L. 1956 § 31-8-2, “Operation of vehicle when registration is canceled, suspended, or revoked,” and § 31-47-9, “Operation of a vehicle with no insurance – 1st offense.” The Appellant appeared before the Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On January 18, 2021, at approximately 5:30am, Police Officer Steven Moretti (Officer Moretti) of the Warwick Police Department was dispatched to a motor vehicle accident in the area of Route 37 and Post Road. (Tr. at p. 2.) Officer Moretti was informed that one of the vehicles was attempting to leave the scene, heading South on Post Road. *Id.* at 3. Officer Moretti was able to stop the vehicle after spotting that it had sustained damage to its rear. *Id.* The vehicle was discovered not to be the cause of the accident, but rather was hit by a garbage truck and then

fled. *Id.* at 7. The vehicle was a green 2005 Jeep, with a commercial plate number 46335 that did not match the vehicle. *Id.* at 3. In addition, the inspection sticker affixed to the vehicle was for a 2009 Toyota Camry. *Id.* at 5. After making contact with the driver, Officer Moretti identified her by her driver's license as Crystal Mitchell (Appellant) and issued citations for her inability to present valid registration and insurance. *See* Summons No. 21203500177.

At trial on May 7, 2021, Officer Moretti testified that the Vehicle Identification Number on the Jeep came back to a Benjamin Ortiz, from Georgia. (Tr. at 4-5.) Officer Moretti also testified that the vehicle was towed, and Appellant was allegedly given a ride to Providence by another officer, Officer Bailey, who was not in attendance at the trial. *Id.* at 3, 9.

Appellant testified that the woman in the accident was not her, that she does not have a Jeep nor has she ever seen the green Jeep at issue. *Id.* at 9. Appellant testified that she was at home with her children on the morning of the accident. *Id.* at 8. Appellant has never lost her license and testified that she does not believe her license could have been given to the officer. *Id.* at 11, 20. Appellant also stated that she lives in Pawtucket and would have no reason to be driven into Providence. *Id.* at 12. When Appellant requested to know who the plates on the Jeep were registered to, Officer Moretti responded, "I don't have that." *Id.* at 17.

At the conclusion of the trial, the Trial Judge sustained the charged violations, found Appellant guilty and imposed an \$85.00 fine for the registration offense and a \$100.00 fine for the insurance offense. Appellant subsequently filed a timely appeal of the Trial Judge's decision. Forthwith is the Panel's decision.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Insurance Company v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Environmental Science Corporation v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and

substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that the Trial Judge’s ruling was “[i]n violation of constitutional or statutory provisions” and “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” § 31-41.1-8(f)(1); § 31-41.1-8(f)(5). Specifically, Appellant argues that the State’s testimony at trial was insufficient to sustain the burden of clear and convincing evidence and maintains that she was not the person who committed the alleged violations.

The prosecution must prove any violation by clear and convincing evidence. Traffic Trib. R. P. 17(a). A violation is proven by clear and convincing evidence where the trial judge “believe[s] that the truth of the facts asserted by the proponent is highly probable.” *State v. Fuller-Balletta*, 996 A.2d 133, 142 (R.I. 2010) (quoting *Parker v. Parker*, 103 R.I. 435, 238 A.2d 57, 60-61 (1968)). However, this standard “does not require that the evidence negate all reasonable doubt or that the evidence must be uncontroverted.” *Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (R.I. 2011) (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188–89 (2008)).

Moreover, it is well-settled that “[t]he task of determining the credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury.” *DeSimone Electric, Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walter v. Baird*, 433 A.2d 963, 964 (R.I. 1981)). As such, this Panel “lacks the authority to assess witness credibility or to substitute its

judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Liberty Mutual Insurance Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). Therefore, a trial justice’s factual findings are “entitled to great weight and will not be overturned unless the factual finding[s] [are] clearly wrong or unless the trial court overlooked or misconceived material evidence.” *Norton v. Courtemanche*, 798 A.2d 925, 932 (R.I. 2002) (quoting *Walsh v. Cappuccio*, 602 A.2d 927, 930 (R.I. 1992)).

Here, the Trial Judge found that a license was given to Officer Moretti, stating “Now if the person didn’t show a license that’s a violation and it would be another violation I’d be looking at on this ticket, operating with no proof of license.” (Tr. at 11.) Moreover, the Trial Judge found Officer Moretti credible when he testified that it was Appellant’s license that he looked at on the morning of the incident. *Id.* at 18.

A. § 31-8-2, “Operation of vehicle when registration is canceled, suspended, or revoked”

First, Appellant argues that the registration violation must be dismissed as there is a lack of evidence that shows Appellant was driving the vehicle in question. Appellant points to a number of identification issues, including a VIN number belonging to a male resident in Georgia, fraudulent license plates and a fraudulent inspection sticker that did not match the vehicle involved, and the fact that the police report does not state that license was presented. *See id.* at 5-6. Moreover, Appellant points out that Officer Moretti admitted at trial that he did not know who the plates were registered to, and further, that he failed to contact the owner of vehicle as he lived out-of-state. *Id.* at 4, 17. Additionally, Officer Moretti denied Appellants request to be provided with the driver’s license number. *Id.* at 12, 18. Lastly, Appellant was allegedly given a ride “back to Providence” when in fact, she is a documented resident of Pawtucket. *Id.* at 9.

Importantly, however, Officer Moretti stated at that Appellant's driver's license was the same driver's license he looked at five months previously at the traffic stop and identified Appellant as the same woman he stopped and spoke with that morning. *See id.* at 18. As such, this Panel is satisfied with the Trial Judge's determination that Appellant's license was given to Officer Moretti at the traffic stop and will not "substitute its own judgment." *See Link*, 633 A.2d at 1348. Accordingly, the Trial Judge's decision with respect to the registration offense was not clearly erroneous. *See* § 31-41.1-8(f)(5).

B. § 31-47-9, "Operation of a vehicle with no insurance – 1st offense"

Appellant was charged under § 31-27-9, which reads, in part:

"(a) Any *owner of a motor vehicle* **registered** in this state who shall **knowingly** operate the motor vehicle or knowingly permit it to be operated in this state without having in full force and effect the financial security required by the provisions of this chapter, and any other person who shall operate in this state any motor vehicle **registered** in this state **with the knowledge** that the owner of it does not have in full force and effect financial security, except a person who, at the time of operation of the motor vehicle, had in effect an operator's policy of liability insurance, as defined in this chapter, with respect to his or her operation of the vehicle, may be subject to a mandatory suspension of license and registration..." (emphasis added).

Appellant argues that the vehicle here, was *not* registered at the time of traffic stop as is statutorily required. *See id.* The Trial Judge expressly found that the vehicle was not registered as "the registration had been cancelled." (Tr. at 4.) Further, the knowledge requirements cannot be met as the operator of the vehicle was not the owner of the vehicle and Appellant argues we cannot know whether the owner permitted anybody to operate the vehicle as Officer Moretti admitted he did not make contact with the true owner. *See id.* at 4. Thus, Appellant argues that the Trial Judge's decision with respect to the insurance offense was in violation of constitutional or statutory provisions. *See* § 31-41.1-8(f)(1). This Panel agrees.

The record is clear that the vehicle at the time of the stop was not registered in the State of Rhode Island and therefore, was not required to be insured pursuant to § 31-27-9(a). Accordingly, the Panel finds the Trial Judge's decision as to the insurance offense was in violation of statutory provisions. *See* § 31-41.1-8(f)(1).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision with respect to the registration offense was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The substantial rights of the Appellant have not been prejudiced and the charged violation of § 31-8-2 is sustained.

With respect to the insurance offense, however, this Panel finds that the prosecution did not meet its burden of clear and convincing evidence, and that the Trial Judge's ruling was in violation of statutory provisions. The charged violation of § 31-47-9 is dismissed.

Accordingly, Appellant's appeal is denied in part, and granted in part.

ENTERED:

Magistrate Michael DiChiro (Chair)

Associate Judge Edward C. Parker

Chief Magistrate Domenic A. DiSandro, III

DATE: _____